

Alliance for Better Campaigns



To: Meredith McGehee
From: Dawn Holian
Re: Proposal to strengthen disclosure
requirements for broadcast stations
Date: July 8, 2003

Memorandum

Background

The Federal Communications Commission (FCC) requires stations to keep a public file containing a copy of their license, equal opportunity employment data, ownership reports and a number of other documents (see the attached memo "What to Look for in the Public File" by People for Better TV). In addition, stations must keep a public political file that contains:

- Records of any free time provided to candidates;
- Records of all requests for broadcast time made by or for a candidate for public office, and whether the station granted the request; and
- If the station sold political advertising, a schedule of the time purchased, the times the spots actually aired (spots are often preempted and "made good" at later times), the rates charged, and the classes of time purchased.

The station must make the public files available to members of the public for viewing and/or copying during normal business hours (see 47 CFR § 73.3526 and 47 CFR § 73.1943).

Flaws in the Current System

In 2000 and 2002, the Alliance for Better Campaigns partnered with groups in dozens of media markets to collect the public political files of top-rated television stations in order to analyze the rates that candidates paid for broadcast advertising. Most stations were cooperative in allowing researchers to make copies of the files, though there were isolated cases of stations' refusing to grant access to the public files or charging excessive rates to make copies (see attached memo "TV stations and access to public logs" from the Money in Politics Research Action Project, the Alliance's state partner in Oregon). Academics working with the Center for the Study of Elections and Democracy had similar experiences when collecting public files (see attached memo "Compliance with FCC Ad-Buy Regulations and FCC Enforcement").



In addition the amount of information disclosed and the format of the advertising logs varied wildly from station to station. The lack of a universal standard for record-keeping makes it difficult to analyze and compare the candidate advertising logs from different stations.

Further, the formats currently used by most stations severely hamper the ability of researchers to determine whether stations artificially inflate candidate rates just before election day, or whether candidates choose to pay a higher rate to guarantee spot placement.

Proposed Solution

One solution is to add provisions to the “Our Democracy, Our Airwaves Act” that would direct the FCC to require all stations to use a standardized form, designed by the FCC, for all stations to log their candidate advertising. Note: This provision is narrowly designed to affect only ads placed by candidates, not ads placed by issue groups. The issue of disclosure of advertising buys by issue groups merits attention, but should probably be addressed in other legislation.

Specifically, the form should include:

- Station call letters and mailing address.
- The name and telephone number of the station’s sales manager.
- The name of the candidate purchasing advertising time and the office (s)he is seeking.
- The name, mailing address and telephone number of the candidate’s media buyer.
- Specific information on each ad bought including:
 - Date and time the ad aired.
 - Program in which the ad aired.
 - Length of the ad.
 - Class of time purchased. It should be clear whether the ad is non-preemptible, preemptible with notice or immediately preemptible.
 - Price of the ad.
- Notation as to whether the contract is a draft or final version. Often political advertising contracts go through multiple revisions between the time they are placed and the time the ads air. Many stations file multiple copies of the same contract in the public file, making it difficult for researchers to determine which copy was the final one.

Attachments

- Memo from People for Better TV – “What to Look for in the Public File.”



- Memo from the Money in Politics Research Action Project – “TV stations and access to public logs.”
- Memo from the Center for the Study of Elections and Democracy – “Compliance with FCC Ad-Buy Regulations and FCC Enforcement.”
- Template for an “ideal” station ad log.
- Examples of current station ad logs.

What to Look for in the Public File

(written by *People for Better TV* at: www.bettertv.org/lookfor.html)

The documents required to be placed in the public file are as follows:

- The License. Stations must keep a copy of their current FCC license in the public file, together with any material documenting FCC-approved modifications to the license. The license reflects the station's technical parameters (authorized frequency, call letters, operating power, transmitter location, etc.), as well as any special conditions imposed by the FCC on the station's operation. The license also indicates when it was issued and when it will expire.
- Applications and Related Materials. The public file must contain copies of all applications filed with the FCC that are still pending before either the FCC or the courts. These include applications to sell the station (technically known as "assigning" or "transferring" the license) or to modify its facilities (for example, to increase power, change the antenna system, or change the transmitter location).

Also, the station must keep copies of any construction or sales application whose grant required us to waive our rules. Applications that required a waiver, together with any related material, will reflect the particular rule(s) that we waived. The station must also keep renewal applications that we granted for less than a full license term until final grant of their next renewal application. We may grant such short-term renewals when we are concerned about the station's performance over the previous term. These concerns will be reflected in the renewal-related material in the public file.

- Citizen Agreements. Stations must keep a copy of any written agreements they make with local viewers or listeners. These "citizen agreements" deal with programming, employment, or other issues of community concern. The station must keep these agreements in the public file for as long as they are in effect.
- Contour Maps. The public file must contain copies of any service contour maps or other information submitted with any application filed with the FCC that reflects the station's service contours and/or its main studio and transmitter location. These documents must stay in the file for as long as they remain accurate. Not all stations are required to have contour maps.
- Material Relating to an FCC Investigation or a Complaint. Stations must keep material relating to any matter that is the subject of an FCC investigation or a complaint that the station has violated the Communications Act or our rules. The station must keep this material until we notify it that the material may be discarded. Since we are not involved in disputes regarding matters unrelated to the Communications Act or our rules, stations do not have to keep material relating to such matters in the public file.

- Ownership Reports and Related Material. The public file must contain a copy of the most recent, complete Ownership Report filed for the station. This report has the names of the owners of the station and their ownership interests, lists any contracts related to the station that are required to be filed with the FCC, and identifies any interest held by the station licensee in other broadcast stations.
- List of Contracts Required to be Filed with the FCC. Stations have to keep either a copy of all the contracts that they have to file with us, or an up-to-date list identifying all such contracts. If the station keeps a list and you ask to see copies of the actual contracts, the station must give them to you within seven days. Contracts required to be maintained or listed in the public inspection file include:
 1. Contracts relating to network service (network affiliation contracts);
 2. Contracts relating to ownership or control of the licensee or permittee or its stock. Examples include articles of incorporation, bylaws, agreements providing for the assignment of a license or permit or affecting stock ownership or voting rights (stock options, pledges, or proxies), and mortgage or loan agreements that restrict the licensee or permittee's freedom of operation;
 3. Management consultant agreements with independent contractors, and station management contracts that provide for a percentage of profits or sharing of losses.
- Political File. Stations must keep a file containing records of all requests for broadcast time made by or for a candidate for public office. The file must identify how the station responded to such requests and (if the request was granted) the charges made, a schedule of the time purchased, the times the spots actually aired, the rates charged, and the classes of time purchased. The file must also reflect any free time provided to a candidate. The station must keep the political records for two years after the spot airs. You can find the political broadcasting rules elsewhere in this manual.
- Annual Employment Reports and Related Material. We require all radio and TV stations to afford equal opportunity in employment. We also prohibit employment discrimination on the basis of race, color, religion, national origin, or sex. We require stations to file reports annually describing how they have complied with these policies. Broadcasters also will be required to file a Certificate of Compliance every second, fourth and sixth year of the license term certifying compliance with the EEO Rule. Television stations and every radio station that is part of an employment unit with more than ten full-time employees will be required to file a copy of their EEO public file report midway through the license term with the FCC. This information will be analyzed as part of the Commission's mid-term review of a station's EEO program. Stations will also be required to file their EEO public file report with their renewal application and cable entities will be required to file their EEO public file report as part of the supplemental information required by statute to be filed every five years.

- Copies of the FCC Manual: The Public and Broadcasting. Stations must keep a copy of this manual in the public file. You can also read it on our Internet web site at <http://www.fcc.gov/mmb/prd/docs/manual.html> [see also Where to Obtain below].
- Letters and E-Mail from the Public. Commercial stations must keep written comments and suggestions received from the public regarding their operation for at least three years. Noncommercial stations are not subject to this requirement.
- Issues/Programs List. Every three months, all stations must prepare and place in their file a list of programs that have provided their most significant treatment of community issues during the preceding three months. The list must briefly describe both the issue and the programming where the issue was discussed. The stations must keep these lists for the entire license term.
- Children's Television Programming Reports. The Children's Television Act of 1990 and our rules require all TV stations to air programming that serves the educational and informational needs of children 16 and under, including programming that is specifically designed to serve such needs. In addition, commercial TV stations must make and retain Children's Television Programming Reports identifying the educational and informational programming for children aired by the station. (Noncommercial stations are not required to prepare these reports.) The report must include the name of the person at the station responsible for collecting comments on the station's compliance with the Children's Television Act. The station has to prepare these reports each calendar quarter, and it must place them in the public file separately from the file's other material. Stations must keep the reports for the remainder of their license terms. You can also view each station's reports on the FCC web site at <http://svartifoss.fcc.gov:8080/prod/kidvid/prod/kidvid.htm>.
- Records Regarding Children's Programming Commercial Limits. The Children's Television Act of 1990 and our rules limit the type and amount of advertising that may be aired in TV programming directed to children 12 and under. On weekends, commercial television stations may air no more than 10.5 minutes of commercials per hour during children's programming, and no more than 12 minutes on weekdays. Stations must keep records that substantiate compliance with these limits for the remainder of the license term.
- Radio Time Brokerage Agreements. A time brokerage agreement is a type of contract that generally involves a station's sale of discrete blocks of air time to a broker, who then supplies the programming to fill that time and sells the commercial spot announcements to support the programming. Commercial radio stations must keep a copy of every agreement involving: (1) time brokerage of that station; or (2) time brokerage by any other station owned by the same licensee.
- List of Donors. Noncommercial TV and radio stations must keep a list of donors supporting specific programs for two years after the program airs.

- Local Public Notice Announcements. When someone files an application to build a new station or to renew, sell, or modify an existing station, we often require the applicant to make a series of local announcements to inform the public of the application's existence and nature. These announcements are either published in a local newspaper or made over the air on the station, and they are intended to give the public an opportunity to comment on the application. Copies of these announcements must be retained in the public inspection file.



Money in Politics Research Action Project

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miprap@oregonfollowthemoney.org • www.oregonfollowthemoney.org

May 20, 2003

To: Dawn Holian, Alliance for Better Campaigns
From: Janice Thompson, MiPRAP Executive Director
Re: TV stations and access to public logs

In Oregon, the Money in Politics Research Action Project worked with the Alliance for Better Campaigns to obtain public logs from two Portland TV stations. The difference between the two stations in terms of ease of obtaining this information and general attitude about releasing this data was extreme.

The public log request was made three times to these two stations. Each time the focus was for the records for a week.

One station (KATU, Channel 2) consistently had a great attitude and made the requested copies and had them at their front desk for pick up within a couple days of the request. Indeed, though we offered, this station did not charge us for copying.

The other station (KGW, Channel 8) was much more difficult to work with. We were only able to pick up the requested information after repeated reminder phone calls. In general, the experience felt like “pulling teeth” rather than obtaining public records.

The third request was the most difficult. After weeks of delay, we finally got word that the request was ready only to find that the entire public record had been copied resulting in a copy charge of over \$600 rather than the appropriate \$40 charge for what we really requested. We were able to negotiate to pay for just the information we had requested but this whole process greatly complicated and delayed obtaining these public records.

We have reviewed our notes on phone calls made to the two stations and can see no difference in how the requests were made that would explain this significant difference in the ease of obtaining these public logs. Indeed, as the delay regarding the third request for the recalcitrant lengthened we offered to put the request in writing because we were concerned that there was a misunderstanding about the request that was contributing to the delay.

As part of the subsequent negotiation to only pay for the requested copies, our contact person’s supervisor decided that all future requests for public records would need to be put in writing. Since we had already made this offer, we expressed appreciation for this policy change. I hope that this new procedure will eliminate these kinds of problems in the future. But the significant difference between these two stations indicate a need for more training and awareness about the public access regulations concerning political advertising logs.

MEMORANDUM
CENTER FOR THE STUDY OF ELECTIONS AND DEMOCRACY
BRIGHAM YOUNG UNIVERSITY

DATE: MAY 06, 2003

TO: PAUL TAYLOR AND MEREDITH MCGEHEE

FROM: DAVID MAGLEBY, QUIN MONSON, AND JONATHAN TANNER

RE: COMPLIANCE WITH FCC AD-BUY REGULATIONS AND FCC ENFORCEMENT

A large part of our research on the 2002 election cycle included gathering ad buy data from stations in competitive races to help track both candidate and outside group election spending. These suggestions are drawn from our field research and might help interested parties more easily obtain information on issues of public controversy. These suggestions are drawn, in part, from informal inquiry we made with the academics who participated in our study in 2002. Below we list some of the problems our academics have had generally and some suggestions for revised regulations.

Our experience with the network affiliated television stations indicates that there is still a good deal of ignorance about the disclosure requirements. The candidate ad-buy information is currently subject to the most disclosure. But even this information was sometimes difficult to obtain; several of our academics had problems getting the information on their first try. In Iowa one station refused to give the information on candidates and finally complied only after Campaign and Media Legal Center wrote them a strongly worded letter. Some stations eventually gave our researchers access to the information but then charged up to a dollar a page to make copies. In Missouri these high rates coupled with the station's unwillingness to answer questions gave our research assistant the impression that they were really trying to discourage campaign and academic types from seeking the information in their political and public interest files.

Although we were generally able to get the candidate information eventually, it would be helpful if the FCC required stations to maintain summary information on a standard form. As it stands, these files can be large and messy. Some of our researchers complained that information was often incomplete, even from stations that allowed them complete access to their public files, because files were lost and incorrectly filed. Stations would be more likely to be informed and accurate about the regulation if they had a common disclosure form. Requiring stations to complete a standard form would also make disclosure much more systematic. The form could be simple and include one line for each ad buy with the group's name and contact info, the amount paid, and when the ad actually ran (ads are often preempted and run at different times.)

One problem with political advertising cost estimates like those made by groups such as CMAG is that they use average rates to estimate advertising costs. Interest groups and even candidates will often pay a premium to guarantee that their spot is not preempted. If the FCC required a standard



MEMO

form, it would be a relatively easy to move to the next step of central disclosure (perhaps even electronically), which would be extremely helpful to the media and public interest groups with interest in determining how much money is spent on a campaign, especially for cable stations whose local offices are often difficult to locate.

While we ultimately had good success getting candidate information, we were much less successful in getting similar information on outside groups running ads on issues of “public importance.”

Disclosure rules for interest groups currently require much less disclosure. If groups do not use a “positive identifiable appearance of a candidate” stations are only required to provide minimal information about the group’s identity from the NAB form. This language is often interpreted very narrowly by the stations to mean that any ad which doesn’t show a picture of a candidate or a candidate’s name printed on screen is exempt from full disclosure.

Our academics generally were able to get about 50 – 75 percent of the stations to provide ad-buy information on public interest groups. In Minnesota we had a station that refused to release party or interest group ad-buy data, citing a letter from the Republican National Party threatening suit if the station released any of their ad-buy data. We sent them a letter but in this case our efforts to get the information were unsuccessful. The station never responded to our letter and, perhaps coincidentally, perhaps not, after we sent this letter some of the other stations in this market started giving us less information than they had been giving in the past. Because of our fear of poisoning the well for future contact we often took no action when groups refused to give us this information.

The information from the NAB form that is required for ads of public importance provides no information on advertising costs and minimal information on the groups doing the spending. In the 1998 Nevada Senate race our academic called the contact number for a group which had spent almost \$300,000 on television ads called The Foundation for Responsible Government and when they answered the phone he discovered that it was the Nevada Trucking Association.¹ The FCC needs to change the requirement for outside groups and make the issue ads subject to at least the same disclosure requirements it uses for candidates. CSED research shows that these outside groups are effective in communicating election messages.² Full disclosure at the stations may be the only way we have of monitoring activities of so called 501(c)3, 4, 5, 6 groups who currently fall outside of both FEC and IRS regulations. Again this shouldn’t put undue burden on the station if there is a simple standard form that they can use for both candidates and groups.

Suggested Form:

Group Name

Contact Person

Address

Phone

Date Purchased

Amount paid

Number of ads run

Times of ads run

Additional Payments or Refunds

¹Tim Fakler et al. *Outside Money*. Ed. David B. Magleby. 2000 P. 125.

²David B. Magleby. *Dictum Without Data: The Myth of Issue Advocacy and Party Building*. Center for the Study of Elections and Democracy, BYU. 2000.

Contract # 9999-1234

Date Entered: 10/20/03

Check one:

☐ Draft (Note: A Finalized Contract Must Be Filed)

☒ Final

Station Information

Call Letters WXXX
Address 123 Main Street
Any City, US 12345
Sales Manager John Smith
Phone Number (555) 555-5555 x 999

Candidate

Name Jane Jones
Office Sought Governor
Party Independent

Media Buyer/Agency

Company Media Buying Inc.
Campaign Jones for Governor
Address 987 Whatever Avenue
New York, NY 11111
Buyer's Name Sally Lee
Phone Number (555) 555-5555

Dates	Days	Program	Time Slot	Class	Length of Spot	Name of Spot	Price per Spot	# Spots	Total Price
10/25/04 – 11/1/04	Mon, Wed, Fri	5am Morning News	5:01am-6:00am	2	30 sec	Leadership	\$400.00	3	\$1,200.00
10/26/04-10/26/04	Thurs	C.S.I.	9:00pm-10:00pm	5	30 sec	Leadership	\$5000.00	1	\$5,000.00
10/28/04-10/29/04	Sat, Sun	6pm Weekend News	6:00pm-6:29pm	1	60 sec	Jones Bio	\$1000.00	4	\$4,000.00

Explanation of Classes (to be defined explicitly by each station)

- 1 = Non-preemptible
- 2 = Preemptible with x days notice
- 3 = Preemptible with x days notice
- 4 = Preemptible with x days notice
- 5 = Immediately preemptible
- 9 = Run of schedule (immediately preemptible)

Gross Totals: 8 ads \$10,200.00
Agency Commission: \$1,530.00
Net Due: \$8,670.00

BOB CLEGG
COX FOR MICHIGAN ATTORNEY GEN.
MIDWEST COMMUNICATIONS & MEDIA
57 E. GAY STREET
COLUMBUS, OHIO 43215

REPRINT 12/19/02
COX FOR MICHIGAN
POL 0011

896848 YES 986778 10/18/02 10/31/02 2 PNS -DTR LOC STD

EDS

10/28/02 R 896848 P

WDIV-TV COX FOR MI. ATTY GEN

LCOX (R) COX FOR ATTY GEN.

PO

65 11/04/02

COX FOR MI. ATTY

01	10/28/02	3	11/01/02	30	M-F	6-7AM	1	1	1	1	1	FN P1	950	11111
02	11/04/02	3	11/04/02	30	M-F	6-7AM	1					FN P1	950	1
03	10/28/02	3	11/01/02	30	M-F	7-10AM	1	1	1	1	1	PV P1	1,000	11111
04	11/04/02	3	11/04/02	30	MON	7-10AM	1					PV P1	1,000	11111
05	10/28/02	3	11/01/02	30	M-F	12-1230PM	1	1	1	1	1	NN P1	1,000	11111
06	11/04/02	3	11/04/02	30	MON	12-1230PM	1					NN P1	1,000	11111
07	10/28/02	3	11/01/02	30	M-F	5-6PM	1	ROTATING				3 E1 P1	2,100	10101
08	11/04/02	3	11/04/02	30	MON	5-6PM	1					E1 P1	2,100	1
09	10/28/02	3	11/01/02	30	M-F	6-630PM	1	ROTATING				4 E6 P2	2,400	11110
10	11/04/02	3	11/04/02	30	MON	6-630PM	1					E6 P2	2,400	1
11	10/28/02	3	11/01/02	30	M-F	7-730PM	1	ROTATING				3 AX P1	3,500	10101
12	11/04/02	1	11/04/02	30	MON	7-730PM	1					AX P1	3,500	1
13	10/28/02	3	11/01/02	30	M-F	730-8PM	1	ROTATING				4 JE P1	3,500	11110
14	11/04/02	3	11/04/02	30	MON	730-8PM	1					JE P1	3,500	1
15	10/28/02	3	11/03/02	30	M-SUN	11-1135PM	1	ROTATING				4 LN P1	7,000	1010101
16	11/04/02	3	11/04/02	30	MON	11-1135PM	1					LN P1	7,000	1
17	11/02/02	3	11/03/02	30	SA/SU	6-630PM			1	1		6X P1	2,000	11
18	11/03/02	3	11/03/02	30	SUN	9-10AM				1		ST P1	1,000	1
19	11/02/02	3	11/02/02	30	SAT	7-9AM			1			SS P1	1,000	1
20	11/02/02	3	11/02/02	30	SAT	9-10AM			1			WK P1	1,000	1
21	11/03/02	3	11/03/02	30	SUN	10-11AM				1		NT P1	650	1
22	11/03/02	3	11/03/02	30	SUN	4-5PM				1		WB P1	1,000	1
23	11/03/02	3	11/03/02	30	SUN	12M-1AM				1		BR P1	300	1

1100A

0700A

1000A1

REP: TEL# 215-564-1206 FAX# 215 564 1103
CREDIT ADVISORY: ADVERTISER CREDIT RISK !!!
CONTRACT SALES ORDER

*** ORIGINAL ORDER (REV#0) ***
FROM REP AUG21/02 16:26:47 *** WRAL-TV ***

REP HEADLINE# 3344981
AGENCY NAME-NATIONAL MEDIA INC.
/CONTRACT#/TC/AGY/CUSTOMER#/ATTENTION /NRL/CS/OFFICE /SALESPERSON /SAL#/
/ / / /009355 / KRISTY MORAN / / PHI -PHILADELPHIA / MICHAEL MCCALL /0660/
/ADVERTISER /ADV#/PRODUCT /PRD#/
/ POLITICAL ADV. /0000/ DOLE 2002 COMMITTEE / EST# /
AGENCY - 815 SLATERS LANE / ED13/
ADDRESS ALEXANDRIA, VA. 22314

START DATE-AUG26/02 END DATE-SEP1/02 WK-1

REP: TO DAVE/MARILYN
FR MIKE/AUDREY
NEW ORDER
TOTAL= \$20150
PLS CONF AND THANKS

***** THIS IS A CASH IN ADVANCE SCHEDULE *****																						
CON CM		START SP	END	TIME-PERIOD	DAYS	PC	CALENDAR				N	CLPL	RATE	T B	TTL							
LN	TC OR	DATE	EW	DATE	LEN	START	END	AGENCY ADVERTISER CODE =	AGENCY PRODUCT CODE =	AGENCY EST# = ED13				P	S	SPOT	LN	DESCRIPT				
1		8-26		8-30	30	700A-900A	M-F			: : : / / / / /	5	4		\$350.00			5					
															CON COM1: EARLY SHOW							
2		8-26		8-30	30	900A-1000A	M-F			: : : / / / / /	4	4		\$150.00			4					
															CON COM1: REGIS							
3		8-26		8-30	30	1200N-100P	M-F			: : : / / / / /	3	5		\$225.00			3					
															CON COM1: NOON NEWS							
4		8-26		8-30	30	500P-530P	M-F			: : : / / / / /	2	4		\$800.00			2					
															CON COM1: NEWS							
5		8-26		8-30	30	530P-600P	M-F			: : : / / / / /	1	4		\$800.00			1					
															CON COM1: NEWS							
6		8-26		8-30	30	600P-630P	M-F			: : : / / / / /	2	4		\$1,000.00			2					
															CON COM1: NEWS							
7		8-26		8-30	30	700P-730P	M-F			: : : / / / / /	1	4		\$700.00			1					
															CON COM1: INSIDE ED							
8		8-27		8-27	30	800P-900P	TUE			: : : / / / / /	1	4		\$2,400.00			1					
															CON COM1: JAG							